(2) *Mole* v. *Mole* [1950] 2 All E.R. 328.

(3) *Theodoropoulas* v. *Theodoropoulas* [1963] 2 All E.R. 772.

MAGISTRATE'S CIVIL APPEAL.

K. D'Cruz for the appellant.

John Ang for the respondent.

Ibrahim J.: This is an appeal by the husband against the decision of the learned magistrate who ordered him to pay $60 per month as maintenance for his wife with effect from 1st October 1967.

The learned magistrate found that the wife was compelled to leave the matrimonial home and that the husband's offer to take her back was not sincere. In so finding he took into consideration the evidence given by the Senior Chinese Affairs Officer, Malacca (P.W.2) before whom the parties had appeared with a view to reconciliation. Counsel for the husband had objected to admission of P.W.2's evidence but in fairness to the learned magistrate no authority was cited in support thereof.

It is clear from the judgment in *McTaggart* v. *McTaggart*,[1] *Mole* v. *Mole*,[2] and *Theodoropoulas* v. *Theodoropoulas* [3] and other cases that the evidence of P.W.2 was not admissible. In *Mole* v. *Mole*,[2] for instance, Denning L.J. in his judgment at page 329 said:—

"I take it that the principle of *McTaggart* v. *McTaggart* applies not only to probation officers, but also to other persons such as clergy, doctors, or marriage guidance counsellors, to whom the parties resort with a view to reconciliation when there is a tacit understanding that the conversations are without prejudice."

It would be purely speculative for this court to say what assessment the learned magistrate would have given to the credibility of the wife (P.W.1) or the husband (D.W.1) whom he had heard and seen and whether he would have come to the same finding if P.W.2 had not given evidence and in the circumstances of this case I would allow this appeal, set aside the maintenance order and remit the case back to the magistrate's court for re-hearing before another magistrate. There will be no order as to the costs of this appeal.

Appeal allowed; re-hearing ordered.

Solicitors: *Joseph & Son; Sault, Keith Sellar & Co.*

GAN LEONG GEE & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) March 28, 1969]

[Singapore — Magistrate's Appeal Nos. 58 & 59 of 1968]

Penal Code, ss. 415, 120A & 511 — Criminal conspiracy to cheat bank — Obtaining shipping guarantee by deceit.

Evidence — Evidence of accomplice — Corroboration — Nature of corroboration required.

The two appellants, together with a third person named Koh Cho Phuan, were convicted by a district court on a charge of conspiracy to cheat, on 42 charges of cheating and six charges of attempted cheating. The three convicted persons were sentenced to three years imprisonment each for the offence of conspiracy, three years imprisonment in respect of each of the 42 offences of cheating and 18 months imprisonment in respect of each of the six offences of attempted cheating. All the terms of imprisonment were ordered to run concurrently. The two appellants appealed against their conviction on the aforesaid charges and the sentences imposed on them. There was no appeal by Koh Cho Phuan.

The question for determination in this appeal was whether or not the two appellants were parties to the conspiracy to cheat the bank, for if they were not, then they could not be guilty of the cheating and attempted cheating offences.

The second appellant was convicted on the evidence of one Sim who was a self confessed criminal, an accomplice of the conspirators and the principal witness for the prosecution.

Held: (1) an appellate court will not allow a conviction obtained on the uncorroborated evidence of an accomplice to stand unless there is a clear indication by the trial court that it was aware that there was no corroboration and that inspite of the absence of corroboration it was so convinced of the truth of the accomplice's evidence that if felt safe in convicting the accused;

, (2) the evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirm in some material particular not only that the crime has been committed but also that the accused committed it;

(3) there was no evidence in this case which could be regarded as corroborative evidence which in any way connected the second appellant with the offence of conspiracy to cheat the bank;

(4) the learned district judge had not stated in his grounds of judgment that he was aware that the evidence against the second appellant of Sim, the accomplice, was uncorroborated and as there was no other evidence against the second appellant, his conviction could not be allowed to stand;

(5) as for the 1st appellant, apart from the evidence of Sim, there was ample other evidence which was sufficient to sustain a conviction against him and the learned district judge was fully justified in convicting the 1st appellant on all the charges on which he was tried.

Cases referred to:—

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658.

(2) *Chiu Nang Hong* v. *Public Prosecutor* [1965] 1 M.L.J. 40, P.C.

MAGISTRATE'S CRIMINAL APPEAL.

1st appellant in person.

E.L. Gardner, Q.C. (*Yin Ee Kheng* with him) for the 2nd appellant.

Francis T. Seow (Solicitor-General) (*K.S. Rajah* and *Tan Teow Yeow*, Deputy Public Prosecutors with him) for the respondent.

Cur. Adv. Vult.

Choor Singh J.: The two appellants, together with a third person named Koh Cho Phuan, were convicted by a district court on a charge of conspiracy to cheat, on 42 charges of cheating and six charges of attempted cheating. The three convicted persons were sentenced to three years imprisonment each for the offence of conspiracy, three years imprisonment in respect of each of the 42 offences of cheating and 18 months imprisonment in respect of each of the six offences of attempted cheating. All the terms of imprisonment were ordered to run concurrently. The two appellants now appeal against their conviction on the aforesaid charges and the sentences imposed on them. There is no appeal by Koh Cho Phuan.

There is no doubt at all that there was in this case a criminal conspiracy to cheat the Lee Wah Bank Ltd. (hereinafter referred to as "the bank") and the conspirators succeeded in doing so to the extent of $893,982.56 which the bank paid out on 42 shipping guarantees which were obtained by the conspirators from the bank by deceit. The 42 charges of cheating were in respect of the said 42 shipping guarantees which the conspirators failed to redeem and the six charges of attempted cheating were in respect of another six shipping guarantees on which the bank refused to pay.

Sim Boon Chuan and Koh Cho Phuan were two of the conspirators of whose guilt there is no doubt at all. Sim turned Crown witness and gave evidence for the prosecution. Koh was the first accused in the proceedings before the district court and he is not appealing against his conviction and sentence.

The question for determination in this appeal is whether or not the two appellants were parties to the conspiracy to cheat the bank, for if they were not, then they could not be guilty of the cheating and attempted cheating offences.

Before proceeding any further it is necessary to set out briefly, the manner in which the fraud was perpetrated. The basic factor in the fraud was the shipping guarantees issued by the bank. And what, one may ask, is a shipping guarantee? It is a document issued by a bank which enables a consignee of goods to obtain them immediately without payment. There is in Singapore a practice whereby the ships' agents will always release goods without production of the bill of lading provided they are protected by an indemnity in favour of the ship owners. The form of indemnity is signed by the consignee and a bank which agrees that if the goods are released to the consignee, they will indemnify the shipping company against any loss thereby occassioned and this indemnity is known in this part of the world as a shipping guarantee. The procedure followed in this case in the issue and redemption of shipping guarantees was as follows. Sim who was the sole proprietor of Chop Keet Sang, to which firm the goods were consigned, would apply to the bank for a shipping guarantee. The bank naturally would not issue it without knowing the value of the goods in respect of which the shipping guarantee was required. And there were three ways in which the bank could ascertain their value:—

(a) By inspecting the invoice relating to the goods;

(b) By asking the customer their value; and

(c) By ascertaining their value from other customers of the bank who dealt in such goods.

The bank upon being satisfied with the value of the goods, would issue a shipping guarantee to Sim. Sim would then make an inward declaration to the Government Import and Export Department and obtain from it an import permit. He would then take the shipping guarantee and the import permit to the shipping company which would issue in exchange for the shipping guarantee a delivery order. This delivery order enabled Sim to collect the goods from the godown of the Port of Singapore Authority. It will be seen that the shipping guarantee enabled Sim to obtain goods without having to pay a cent to the consignor of the goods. After selling the goods, Sim would pay the consignor and receive the bill of lading which he would take to the shipping company and receive in exchange for it the shipping guarantee. He would then return the shipping guarantee to the bank and it was only when the bank received back its shipping guarantee that its liability in respect of it ceased. And it is important to bear in mind that the bank's liability in respect of every shipping guarantee was for an unlimited amount. If the goods mentioned in the shipping guarantee turned out to be of a greater value than that declared in the application for the shipping guarantee, the bank was liable for the full invoice value of the goods.

As already indicated the fraud perpetrated on the bank was in respect of goods consigned from Hong Kong to Sim's firm, Chop Keet Sang. Sim obtained in all 60 shipping guarantees in respect of goods consigned to him from Hong Kong. He redeemed 12 of these and failed to redeem 48. And as stated earlier,

the bank had to pay $893,982.56 on 42 of the unredeemed shipping guarantees. The bank refused to pay anything on the remaining six unredeemed shipping guarantees upon discovery that the consignor of the goods was Gan Leong Gee, the first appellant, whom the bank suspected to be involved in the fraud.

The deceit practised on the bank in obtaining the shipping guarantee was the false declaration in the application for the shipping guarantee as regards:—

(a) the nature of the goods, and/or

(b) the quantum of goods, and/or

(c) the value of the goods.

For example, on one occasion a shipment of mushrooms was declared as canned abalone and in addition the declared value of the goods was also false. Another deception which was even more significant was the false declaration as to the quantum, which was done in a very ingenious way. According to Sim it was the appellant Gan who went to Hong Kong and purchased the goods. He is alleged to have instructed the consignors in Hong Kong to repack the goods in larger cases. For example, a normal case of canned abalone contained four dozen tins of abalone. Gan had these goods repacked in large cases each containing 32 dozen tins with the result that when an application for a shipping guarantee was made which stated "28 cases" the goods imported were in fact the contents of 224 cases which had been repacked in 28 large cases. The value declared in the application for the shipping guarantee in respect of such a consignment was that of 28 ordinary cases. A bank official looking at such an application would think that 28 cases containing four dozen tins each were being imported and would consider the declared value reasonable, but the true value of the consignment was eight times that of the declared value and the bank by issuing a shipping guarantee for the release of the consignment was unknowingly making itself liable to eight times the declared value of the goods. As soon as the goods were released, they were sold and the conspirators in this manner realised large sums of money without having paid a cent for the goods.

Another deception practised on the bank was this. In the case of goods consigned from Hong Kong by Chop Guan Leong Hong, of which firm Gan the first appellant was proprietor, the applications by Sim for shipping guarantees disclosed the approximate value of the goods. The goods were not under valued. But they were over-valued in the invoices and the bills of lading. For example, the goods mentioned in shipping guarantee No. 189/64, which is the subject matter of charge No. 46, were according to Sim worth only a few hundred dollars whereas the invoice in respect of these goods gave their value as HK $32,000 (Singapore $17,120). The value stated in the application for the shipping guarantee was $800. The gain to the conspirators here would have been, not by the sale of the goods in Singapore as in the previous example, but by compelling the bank to pay the Hong Kong consignor under its shipping guarantee a sum far in excess of the true value of the goods. The consignor in this instance being no other than Gan the first appellant, the bank refused to pay for reasons which have already been stated.

Again in the case of shipping guarantee No. 226/64 which is the subject of charge No. 27 and which was in respect of a consignment from Hong Kong by a firm named Bestone & Co., the value of the goods according to the relevant invoice was HK $57,270.30 but Sim's evidence is that the true value of the goods was only a few thousand dollars. The value stated in the application for the shipping guarantee was $2,520. In this instance the bank did make payment to the Hong Kong consignor under its shipping guarantee and the only way in which the conspirators could have benefitted from this transaction was if Bestone & Co. shared the proceeds of this fraudulent sale with them.

Why was it necessary, one may ask, to practise these deceptions on the bank? Could not the conspirators have obtained the shipping guarantees from the bank by declaring the full invoice value of the goods? The answer is in the negative and the reason for it is this. All the shipping guarantees were obtained by Sim in the name of his firm, Chop Keet Sang, which was a very old and trusted customer of the bank. But Chop Keet Sang was indebted to the bank in a sum well in excess of $100,000 and the bank refused to give any further credit. When Sim approached the bank on the instigation of the other conspirators, and asked if he could have shipping guarantees, Mr. Kwok, the general manager of the bank, told him that he could have them provided he made a cash deposit equal to 100% of the value of the consignment and paid another sum equal to 30% of the value of the goods. The cash deposit of 100% was to be held as security for the redemption of the shipping guarantee while the additional payment of 30% was to be utilised towards the reduction of his debt to the bank. Provided he made these two payments of 100% and 30% he could have any number of shipping guarantees. Inspite of these onerous conditions the conspirators proceeded to take out shipping guarantees, the intention being to cheat the bank by making it liable under its shipping

guarantees for sums of money far in excess of those which the bank was led to believe it would be liable for. The *modus operandi* was simple. The invoice value of the goods in all cases was far in excess of the value stated in the application for the shipping guarantee. The bank either did not inspect the invoices when the shipping guarantees were issued or if it did, it was shown false invoices by Sim.

I shall now deal with the appeal of the second appellant, Kao Chia Jen, who was accused No. 3 in the proceedings before the district court. The record of the trial shows quite clearly that this appellant was convicted, to use the words of the learned district judge who tried him — "mainly on the evidence of Sim" whom the learned district judge described as the "star" witness for the prosecution. The 42 shipping guarantees which were obtained by fraud and which resulted in the bank losing such a large sum of money, were obtained from the bank by none other than Sim the "star" witness. He was undoubtedly an important member of the conspiracy and he alleged, not that the second appellant was a member of the conspiracy, but that he knowingly assisted the conspiracy in his capacity as an assistant accountant of the bank because he received from the conspirators a bribe of $20,000. Sim was the principal witness for the prosecution and without his evidence there was no case at all against the second appellant. Sim was a self-confessed criminal, an accomplice of the conspirators, and therefore, it was the duty of the learned district judge not only to scrutinise his evidence with the utmost care but also to examine it in detail and give it the most anxious consideration.

As all the evidence against the second appellant was from the mouth of an accomplice, it was the duty of the learned district judge to ascertain whether there was corroboration of any kind to link the second appellant with the conspiracy.

The learned district judge dealt with the question of corroboration in the following passage which appears on page 16 of his grounds of decision:—

> "I was acutely aware that, from the tenor of the charges, the prosecution had conceded that Sim was an accomplice. Such being the case, and, although I accepted Sim as a witness of truth I nevertheless warned myself of the danger of convicting on the uncorroborated testimony of Sim. The rule in *Baskerville's* case does not require that there should be independent confirmation in every detail of the crime related by the accomplice; there must be confirmation in some material particular that not only had the crime been committed, but that the accused committed it. Furthermore, corroboration must be by some evidence, other than that of the accomplice, and it need not be direct, but may be circumstantial.
>
> A perusal of the evidence will show that Sim had been corroborated in no less than about 15 occasions (to which I made mention) by other independent prosecution witnesses. At this stage, I would like to refer to the evidence of Oh Chin Seng (P.W.25) who was brought down from Hong Kong to testify in this case. Although he may be said to be a tainted witness, nevertheless, after observing him most carefully and the manner in which he gave his evidence, I was satisfied that he was a witness of truth whose evidence substantially corroborated Sim's evidence on what had transpired in Hong Kong in December, 1964."

The principle extracted by the learned district judge from the decision in *Baskerville's* case [1] is an immaculate statement of the law but it would appear that he erred gravely in applying it to the evidence in this case. The learned district judge did not ask himself whether there was any independent evidence, direct or circumstantial, which connected the second appellant with the offence with which he was charged. The learned district judge states that "a perusal of the evidence will show that Sim had been corroborated in no less than about 15 occasions by other independent prosecution witnessess." That may well be so but it is not enough that the corroboration shows the witness to have told the truth in matters unconnected with the guilt of the accused. Take, for example, the evidence of Oh Chin Seng as to what transpired in Hong Kong in December 1964. The learned district judge cites it as an example of independent evidence which "substantially corroborated Sim's evidence on what had transpired in Hong Kong in December 1964." The question is does it connect the second appellant with the conspiracy? For it is abundantly clear that the principle of law laid down in *Baskerville's* case is that "the evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect the accused with the crime. In other words it must be evidence which implicates him, that is, which confirms in some material particular not only that the crime has been committed but also that the prisoner committed it." The crucial question before the learned district judge was whether or not there was any independent evidence, direct or circumstartial, which connected the second appellant with the conspiracy? The learned district judge did not consider this question at all and it befalls me to answer it. There is no evidence in this case which can be regarded as corroborative evidence which in any way connects the second appellant with the offence of conspiracy to cheat the bank. When looking at the evidence and trying to identify something which may connect the second appellant with the conspiracy one meets a complete blank. Witness after witness and document after document was tendered in evidence at the trial of the second appellant and yet there is no independent evidence at all to

prove his connection with the conspiracy. So much so that the learned Solicitor-General who appeared for the Public Prosecutor, quite rightly conceded that there was no independent evidence which connected the second appellant with the conspiracy.

Counsel for the second appellant submitted that the second appellant had been convicted on the basis that Sim's evidence was corroborated when in fact it was not and therefore on the authority of the decision of the Privy Council in *Chiu Nang Hong* v. *Public Prosecutor*,[2] the conviction of the second appellant must be quashed. In that case *Chiu* was convicted of rape. At his trial there was a direct conflict between him and the complainant on the crucial issue of consent. She averred that she was frightened into submission; he that she willingly agreed. After setting out the conflicting stories the trial judge said he believed the complainant and announced his conclusion in the following terms:—

"I could not but come to the conclusion that she was speaking the truth, and that in all material circumstances her evidence was corroborated by the facts."

Upon review of all the evidence, their Lordships of the Privy Council said, at page 43:—

"Their Lordships do not need to emphasise that the circumstances did not afford corroboration of the complainant's allegation of no consent. That was the view of the Court of Appeal: their Lordships share it: and the Public Prosecutor admits it. The case is one therefore where the appellant has been convicted on the basis that the complainant's allegation was corroborated when it was not. It is accordingly one of those cases where the protection of the rule which guides courts in these matters has, in effect, been withheld from the appellant. There is thus a miscarriage of justice bringing the case within the category of cases where the Board will intervene."

The learned Solicitor-General submitted that the passage cited from the judgment of the learned district judge on the issue of corroboration should not be given the interpretation suggested by counsel for the second appellant; that the learned district judge was dealing in that passage with the case against the first and second accused; that the learned district judge dealt with the case against the second appellant separately for he went on to say, "Now, let us consider the position of accused No. 3, *vis-a-vis* his appointment as assistant accountant in the foreign exchange department of the Lee Wah Bank and his connections and dealings with Sim" and proceeded to consider the evidence against the second appellant; that the learned district judge has clearly indicated that he was fully aware of the danger of convicting an accused person on the uncorroborated evidence of an accomplice; that nevertheless he believed the evidence of Sim who, although an accomplice, was a competent witness under our law; that the learned district judge was therefore justified in convicting the second appellant and that accordingly the conviction cannot be said to be bad in law. In my view the submission of the learned Solicitor-General cannot be sustained. There is no indication by the learned district judge that in the relevant passage in his grounds of decision he was speaking of the case against the first and second accused only and that his finding of corroboration of Sim's evidence was limited to the same extent and had no reference to Sim's evidence against the second appellant. Apart from this passage there is no other reference to the issue of corroboration. He has not considered anywhere else in his grounds of decision the question whether or not Sim's evidence against the second appellant was corroborated. This is the only passage in the grounds of decision where the question of corroboration is discussed and the passage must therefore be given the interpretation it would ordinarily bear, that is, that there was corroboration of Sim's evidence against all the accused including the second appellant.

In my opinion the learned district judge fell into the same error which in *Chiu Nang Hong's* case resulted in the quashing of the conviction by the Privy Council. The position in both cases is the same. In *Chiu Nang Hong's* case, the accused was tried by a very experienced judge who was aware of the danger of convicting on the uncorroborated evidence of the complainant but nevertheless convicted the accused because he found that the complainant was speaking the truth and that her evidence was corroborated. In the present case too the learned district judge was aware of the danger of convicting on the uncorroborated evidence of Sim but nevertheless he convicted the second appellant because he found that Sim was a witness of truth and that his evidence was corroborated "in no less than about 15 occassions by other independent prosecution witness." And the common feature of both cases is that there was no corroboration at all in either case; in *Chiu Nang Hong's* case the complainant's evidence was uncorroborated and in the present case Sim's evidence against the second appellant was also uncorroborated. And in both cases the convictions were on the basis that there was corroboration when in fact there was none. In my opinion in so far as the issue of corroboration is concerned, this case is on all fours with that of *Chiu Nang Hong*. In that case, Lord Donovan, who delivered the judgment of the Privy Council, after expressing the view that there was in that case a miscarriage of justice, went on to say, at page 43:—

"Their Lordships would add that even had this been a case where the learned judge had in mind the risk of convicting without corroboration, but nevertheless decided to do so because he was convinced of the truth of the complainant's evidence, nevertheless they do not think that the conviction could have been left to stand. For in such a case a judge, sitting alone, should in their Lordships' view, make it clear that he has the risk in question in his mind, but nevertheless is convinced by the evidence, even though uncorroborated, that the case against the accused is established beyond any reasonable doubt. No particular form of words is necessary for this purpose: what is necessary is that the judge's mind upon the matter should be clearly revealed. . . ."

In my opinion the operative words in the above passage are "but nevertheless is convinced by the evidence, *even though uncorroborated,* that the case against the accused is established beyond any reasonable doubt." There must be clear indication by the trial judge that he was aware that there was no corroboration and that inspite of the absence of corroboration, he was so convinced of the truth of the accomplice's evidence that he felt safe in convicting the accused. In this case, nowhere in his grounds of decision has the learned district judge stated that he was aware that Sim's evidence against the second appellant was uncorroborated. The indication is to the contrary; that there was corroboration of Sim's evidence.

As the learned district judge appears to have convicted the second appellant on the basis that there was corroboration of Sim's evidence against the second appellant when in fact there was none, I am compelled by the decision of the Privy Council in *Chiu Nang Hong's* case to hold that the conviction of the second appellant cannot be left to stand. Accordingly it is unnecessary for me to deal with the remaining grounds of appeal put up by the second appellant.

I shall now deal with the appeal of Gan Leong Gee, the first appellant. Quite apart from the evidence of Sim, there is ample other evidence which in my opinion is sufficient to sustain his conviction. The basic fact which enabled the conspirators to cheat the bank was the repacking of the goods in larger cases. For example, in one instance the contents of 400 cases of canned abalone was repacked in 50 large cases or packages. The first appellant admitted this in his evidence but he stated that the idea of repacking the goods in that manner emanated from Sim and that he had the goods repacked on the instructions of Sim. The learned district judge says on page 26 of his grounds of decision "I have not the slightest doubt that the idea of repacking the goods consigned to Chop Keet Sang was that of accused 2 (first appellant) and that it was done on his suggestion". The learned district judge was in my opinion justified in coming to this conclusion upon the evidence before him. But even if the idea emanated from Sim or the third conspirator Koh, it was the first appellant who put the idea into practice. He went to Hong Kong, bought the goods, gave instructions for the goods to be repacked in larger cases, and had then shipped to Chop Keet Sang in Singapore. It does not matter whose idea it was to have the goods repacked. The first appellant knew that the purpose of repacking the goods was to cheat the bank and he had the goods repacked with this purpose in mind. He was therefore clearly a party to the conspiracy to cheat the bank.

Then, there is the question of the six shipping guarantees obtained by Sim in respect of the Guan Leong Hong consignments. These consignments were shipped by the first appellant's Hong Kong firm named Guan Leong Hong to Sim's firm Chop Keet Sang in Singapore. According to the first appellant's evidence these goods were worth $242,000 which means that Sim's firm Chop Keet Sang on receipt of these goods became indebted to the first appellant's firm, Guan Leong Hong, in the sum of $242,000. But the first appellant was not at all interested in collecting this sum from Sim's firm in Singapore. He was pressing the bank to pay up $242,000 on the six shipping guarantees. And in order to substantiate his claim, he obtained false invoices, first, from one Ho Poh Ann and later, from one Oh Chin Seng who was paid $1,000 for the issue of the false invoices. These false invoices were fabricated to show that the first appellant's claim was genuine and that he had in fact bought the goods mentioned in the six shipping guarantees from another Hong Kong firm. When Ho Poh Ann's firm was raided by the Hong Kong police, Ho Poh Ann became frightened and wrote to the first appellant asking for the return of the false invoices he had issued and intimated that he was not willing to be a witness in court in support of Guan Leong Hong's claim against the bank. The first appellant then went to Hong Kong together with Sim and Koh, the third conspirator, and there the first appellant got Oh Chin Seng to issue seven false invoices. The first appellant instructed Oh Chin Seng how to fabricate the false invoices. Later, in Singapore, the first appellant came to an agreement with Sim and Koh, the third conspirator, as to the distribution of the spoils if his firm's claim of $242,000 against the bank succeeded. Sim was to receive $135,000, Koh was to receive $30,000 and the first appellant was to take the remainder, $77,000. Sim's share was to be paid to his aunt, Sim Joo Keow. Having arrived at this agreement the three conspirators went to a solicitor's office to have the agreement put in writing. They went to the office of P.T. Wong

& Co. and there Mr. Wong wrote two letters on the instructions of the first appellant. The first one, to Sim's aunt, was in the following terms:—

20th October, 1964.

"Mr. Sim Joo Keow,
Singapore.
Dear Sir,

Re: Claim of $242,000.00
against various shipping companies

We have been instructed by Guan Leong Hong to confirm the payment of the sum of $135,000 to you in respect of the above claim, on the following terms:—

(1) Guan Leong Hong has agreed to pay you the sum of $135,000 out of the amount of $242,000 which represents 55.9 per cent of the claim above referred to.

(2) That the payment of $135,000 is to be made within three (3) days from the date of receipt of such payment.

(3) Whatever amount paid or recovered by Guan Leong Hong you are to be paid 55.9 per cent thereof.

Yours faithfully,
Sgd. P.T. Wong & Co."

It would appear that Mr. Wong was not aware that Sim Joo Keow was a lady.

The second letter to Koh, the third conspirator, was a follows:—

20th October, 1964.

"Mr. Koh Cho Phuan,
Singapore.
Dear Sir,

Re: Claim of $242,000.00
against various shipping companies

This serves to confirm that we have been instructed by Messrs. Guan Leong Hong to forward to you the sum of Dollars Thirty Thousand ($30,000) should their claim against the various shipping companies be successfully met and paid.

The payment of this sum of $30,000 be made within three (3) days from the receipt of such claim.

However, this arrangement will be revoked should the settlement aforesaid not being successfully concluded and paid.

Yours faithfully,
Sgd. P.T. Wong & Co."

The two letters refer to a claim against various shipping companies because the first appellant's proper claim was against the shipping companies which had released his goods without the production of bills of lading. The shipping companies were in turn holding the bank responsible because they released the goods on the strength of the shipping guarantees given to them by the bank. The claim ultimately fell on the bank but the bank being not satisfied with the *bona fides* of Guan Leong Hong, refused to meet the claim.

The two letters set out above, together with the evidence of Oh Chin Seng, prove conclusively that Guan Leong Hong's claim against the bank for $242,000 was a false claim and that the first appellant was in criminal conspiracy with Sim and Koh to cheat the bank. It is therefore unnecessary to consider the rest of the evidence against the first appellant concerning his involvement in the conspiracy.

The conspiracy was a success and resulted in the bank being cheated on no less than 42 occasions. There were another six attempts to cheat. The first appellant was a member of the conspiracy right from its inception. He remained a member throughout the period when the cheating and the attempts to cheat took place. The conspiracy continued even after the fraud was discovered on 5th March 1964 for the conspirators went to Hong Kong long after this date to obtain false invoices to support Guan Leong Hong's claim of $242,000 against the bank. Although the fraud had already come to light and the police were investigating the matter, the conspirators were still hoping to recover this large sum from the bank and on 20th October 1964 they agreed on its distribution amongst themselves, as evidenced by the two letters cited above. The bank however made it quite clear that they were not willing to settle the claim and would resist it at all costs. In a last desperate attempt to get what little he could from the bank, the first appellant offered to the bank to settle his claim of $242,000 for $66,000. This is borne out by the evidence of Dr. Li Ming Hsun, the manager of the bank. When this offer was rejected the first appellant caused a letter to be written by his solicitor, Mr. R. Ramason, to the bank's solicitors offering to settle for $35,000. This is further proof of the fact that the first appellant's claim was a false one. As the first appellant was a member of the conspiracy during the relevant period, he was clearly guilty of the cheating and attempted cheating offences which were the outcome of the conspiracy and upon the evidence before him, the learned district judge was fully justified in convicting the first appellant on all the charges on which he was tried.

For these reasons, the appeal of the second appellant is allowed, his conviction is quashed and his sentence set aside. The conviction of the first appellant is affirmed and as I do not consider the sentence imposed on him to be manifestly excessive, his appeal is dismissed.

Appeal of the 2nd appellant allowed.
Conviction of the 1st appellant affirmed.

Solicitors: *Tan, Rajah & Cheah.*